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IN THE SUPREME COURT
STATE OF ARIZONA

PETITION TO REPEAL Rule 1(B)(1))
(d) AND AMEND NINE) Supreme Court No. XXX
SUBSEQUENT RULES THAT USE)
THE TERM "VICTIM" IN THE)
ARIZONA RULES OF PROTECTIVE
ORDER PROCEDURE, SUPREME
COURT NO. R-06-0032

Pursuant to Rule 28 of the Rules of the Supreme Court, Mike Palmer, a person "interested . . . in the repeal of a court rule" respectfully petitions this Court to repeal Rule 1(B)(1)(d) of the Arizona Rules of Protective Order Procedure, which defines the term "victim" to be interchangeable with "plaintiff." The Rule/definition should be repealed because 1) on its face it is extremely prejudicial in an already extremely prejudicial procedure and 2) as such, it is unconstitutional, violating the 14th Amendment civil right of defendants to "equal protection of the laws." 3) Further, technically speaking, the definition makes no sense in some contexts later in the Rules.

If said Rule defining the term "victim" is repealed, then the nine subsequent Rules in the Arizona Rules of Protective Order Procedure (hereinafter "Rules of Procedure") which use the term must be amended (modified) to replace "victim" with either "plaintiff" (preferred) or "alleged victim" (only when appropriate). I provide a list of affected Rules and their suggested amendments in Appendix A.

I. Preamble. It appears the prejudicial term "victim" the Committee used in the Rules of Procedure came from the Legislature. Specifically, it appears the Committee quoted definitions verbatim from A.R.S. § 13-3601(A). While we cannot change the law in this forum, we can mitigate their damage in the court and strive for equal justice in the Rules of Procedure.

II. Introduction. A cursory survey of Order of Protection law, A.R.S. § 13-3602 and the Arizona Rules of Protective Order Procedure regarding same, demonstrates a woefully one-sided, prejudicial process that favors the petitioner-plaintiff from the start.

For example, in an OOP, a man (typically) can be evicted from his own house without warning at the point of a gun (literally¹), without due process, based solely on the unchallenged, often unverified, mere ex parte statement of another. [See A.R.S. § 13-3602(G)(2).] There is no challenging the veracity of the plaintiff beforehand. There is no check for soundness of mind of the plaintiff. While plaintiff's statement is ostensibly under oath, the reality is, there are no consequences to the plaintiff if she lies to the court or is mentally unstable.²

Anecdotally, judges hand these things out like candy (to women, but not men, per Craig's list forums and my own informal observations) to be on the "safe side," to avoid a public outcry if something untoward should happen to a woman after a judge denied an Order. Using the term "victim" in the Rules to describe the plaintiff only worsens the bias extant in the Procedure and Practice.

III. Argument. Using the term "victim" to describe the plaintiff in the Rules of

¹ As law enforcement officers are the agents.

² As King Solomon noted, "The first to present his case seems right, till another comes forward and questions him." Proverbs 18:17

Procedure is inherently prejudicial. Even in the case where a plaintiff has a police report alleging she is a victim of Domestic Violence, until a matter has been thoroughly adjudicated, the judicial officer doesn't know for a fact a petitioner is truly a victim and should not presume so during the process. (As with the infamous Duke lacrosse "rape" case.)

Further tilting the scales, the vast majority of plaintiffs who request OOP's are women, as the court knows.³ Apparently this was Congress' intent. Not to make this a battle of the sexes, but, by law, it is. The Rules of Procedure themselves cites Congress' Violence Against Women Act III in Rule 1(G), which released \$1 billion in federal money to train judges and police officers how to deal with violence against women. Not violence against men.

While the individual federal laws in the VAWA are gender neutral, the title of the Act which spawned them is not. It is not the "Violence Against Spouses" Act, which would be impartial. It is the "Violence Against Women Act," which is prejudicial on its face. In fact, the US DOJ has an Office of Violence Against Women which offers a plethora of resources and law exclusively for women on its OVW website.⁴ In describing potential "victims," the Rules of Procedure currently refer to "a victim . . . who is pregnant by the other party," which implies a woman. [See Committee Comment on Rule 6(C)(3)(b)(2)(c).]

All this can have a subtle effect on judges. Speaking as a male, we have a God given tendency to believe and defend women. (As all daughters know.) We want to be the "knight in shining armor" who rescues the "damsel in distress," especially if the damsel is crying.⁵ In

³ That's not to say men are not victims of Domestic Violence. Statistics (and common sense) show that men don't file police reports when attacked by women. cf. Tiger Woods' facial lacerations. Call it a "guy thing."

⁴ <http://www.ovw.usdoj.gov/regulations.htm>

⁵ Another "guy thing."

Martial Arts we have a saying: "Men get into fights. Women are attacked." Hence, societally, we tend to think of women as "innocent victims," whereas men must have done something to "deserve getting hit."⁶ Even female judges may tend to side with their poor (allegedly victimized) sisters.

IV. Conclusion. Gender aside, we should not refer to a plaintiff as a "victim" in a court of law prior to a ruling. In addition to giving the appearance of impropriety, it violates the Defendant's 14th Amendment right to equal protection since the term is prejudicial against the plaintiff. Considering that the core law for Orders of Protection is the Federal Violence Against Women Act and that a majority of plaintiffs are women, when we take gender into consideration and consider our natural and societal leanings, it's doubly prejudicial for the Rules of Procedure to use the word "victim" interchangeably with plaintiff.

Therefore, Rule 1(B)(1)(d) should be repealed, and further occurrences of the word "victim" in the Rules of Procedure should be changed to "plaintiff" or "alleged victim," as appropriate, per Appendix A.

IV. Request for Expedited Adoption. I request expedited repeal of this Rule as permitted by Supreme Court Rule 28(G). There is no need for a comment period because there is no valid or compelling reason to refer to plaintiffs as victims.

Furthermore, I request expedited repeal because this is not trivial "harmless error." It is a patent violation of a Defendant's constitutional right that can ruin the lives of innocent defendants, rendering them homeless. Or worse.

⁶ Like Rodney Dangerfield, we get no respect.

RESPECTFULLY SUBMITTED this 9th day of January 2010.

By 

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APPENDIX "A"

Rule 6(C)(3)(b)(2)(b) should be changed. Replace the word "victim" with "plaintiff," to read:
b) plaintiff and defendant who have a child in common.

Rule 6(C)(3)(b)(2)(c) should be changed. Replace the word "victim" with "plaintiff," to read:
c) plaintiff or defendant who is pregnant by the other party; or

Rule 6(C)(3)(b)(2)(d) should be changed. Replace the word "victim" with "alleged victim":
d) alleged victim is a child who resides or has resided in the same household as the defendant,
and

Rule 6(C)(3)(b)(3) should be changed. Replace the word "victim" with "alleged victim" to read:
3) Blood relationship include alleged victim related to the defendant

Rule 6(C)(3)(b)(4)(a) should be changed. Replace the word "victim" with "plaintiff," to read:
a) plaintiff and defendant who are either married or who have been previously married; and

Rule 6(C)(3)(b)(4)(b) should be changed. Replace the word "victim" with "plaintiff," to read:
b) plaintiff who is related to the defendant . . .

Rule 6(C)(3)(b)(5) should be changed. Replace the word "victim" with "alleged victim" to read:
5) The relationship test is also met when a plaintiff acts on behalf of an alleged victim in any ...

Rule 6(C)(3)(b)(5)(a) should be changed. Replace the word "victim" with "alleged victim"

Rule 6(C)(3)(b)(5)(b) should be changed. Replace the word "victim" with "alleged victim"